RAJI TRANSPORT SDN BHD & ANOR

v.

IDAYU ZULKAFLI

HIGH COURT MALAYA, SEREMBAN
LOW HOP BING J
[CIVIL APPEAL NO: 12-21-2003]
9 FEBRUARY 2004

TORT: *Damages - Negligence - Road accident - Quantum - Fracture C1 vertebra - Whether award of RM30,000 excessive for such injury*

DAMAGES: *Quantum - Fracture C1 vertebra - Whether award of RM30,000 excessive for such injury*

TORT: *Damages - Personal injuries - Fracture C1 vertebra - Whether award of RM30,000 excessive for such injury*

DAMAGES: *Assessment - Principles of - Whether inflation and enhanced cost of living should be considered in the assessment of damages*

The appellants (defendants in the sessions court) appealed to the High Court against the decision of the sessions court in awarding the respondent (plaintiff in the sessions court) RM30,000 for a 'fracture C1 vertebra'. Counsel for the appellants, contending that the award was excessive, argued on the authority of *Lau Ee Ee v Tang King Kwong* that a sum of between RM12,000 and RM16,000 should have been awarded instead. This was because the specialist's medical report on the respondent revealed no residual neurological deficits. Being an excessive award, an appellate court could review the quantum, submitted appellants' counsel. The respondent's counsel however submitted that the appellate court should be disinclined to interfere with the award.

Held:

[1] The High Court having read the appeal record, and having considered submissions of both counsel and the trial judge's grounds of decision could not agree with the appellants' contention that the award of RM30,000 for a 'fracture C1 vertebra' in the year 2003 was wrong in law or in fact. (p 483 b)

[2] The considerations of inflation and enhanced cost of living over a period of more that two decades since *Lau Ee Ee v. Tang King Kwong* should be given proper weight in the assessment of quantum of damages in personal injury litigation. Changes in the value of money, decrease in the purchasing power of the dollar or the increase in the cost of living over the years are relevant factors in the assessment of damages. *Abdul Ghani Hamid v. Abdul Nasir Abdul Jabbar & Anor* [1995] 4 CLJ 317; *Wong Tin Vui v. Patrick Midok & Anor* [1975] 2 MLJ 260; *Lau Ee Ee v. Tang King Kwong* [1986] 1 MLJ 308. (p 483 c-f)

[Dismissing the appeal with costs.]

Case(s) referred to:
Abdul Ghani Hamid v. Abdul Nasir Abdul Jabbar & Anor [1995] 4 CLJ 317 HC ***(foll)***
Amar Singh v. Chin Kiew [1960] MLJ 77 ***(refd)***
Greenfield v. London and North Eastern Railway Co [1945] KB 89 ***(refd)***
Hang Jong Juan v. Tan Yeo Soon [1986] 2 MLJ 5 ***(refd)***
Lau Ee Ee v. Tang King Kwong [1986] 1 MLJ 308 ***(refd)***
Lim Joo Chiang v. Lim Siew Choo & Anor [1955] MLJ 201 ***(refd)***
Mohd Salleh Shariff & Anor v. Bahari Yaakob [2002] 1 LNS 118 ***(refd)***
Pang Ah Chee v. Chong Kwee Sang [1985] 1 MLJ 153 ***(refd)***
Peh Diana & Anor v. Tan Miang Lee [1991] 3 MLJ 375 ***(refd)***
Sivalingam v. Periasamy [1996] 4 CLJ 545 CA ***(refd)***
Tan Cheong Poh & Anor v. Teow Ah Keow [1996] 3 CLJ 665 CA ***(refd)***
Tan Kuan Yau v. Suhindrimani [1985] 2 MLJ 22 ***(refd)***
Topaiwah v. Salleh [1968] 1 MLJ 284 ***(refd)***
Wilson v. Pilley [1957] 3 All ER 525 ***(refd)***
Wong Tin Vui v. Patrick Midok & Anor [1975] 2 MLJ 260 ***(foll)***
Woon Ngee Yew & Ors v. Ng Yoon Thai & Ors [1941] MLJ 37 ***(refd)***
Zamri Md Som & Anor v. Nurul Fitriyaton Idawiyah Nahrawi [2002] 1 CLJ 309 ***(refd)*** *HC*

Other source(s) referred to:
Chan Shick Chin, *Personal Injury, Law, Practice and Precedents*, MLJ 2001, p. 47

For the defendants - Vincent Choo Kok Wai; M/s Ooi Aik Lim & Assocs
For the plaintiff - Muhammad Hisham Segaran; M/s Morthi, Segaran & Co

Reported by AC Simon

JUDGMENT

Low Hop Bing J:

Appeal

This is an appeal by the appellants-defendants ("the defendants") against the decision of the learned sessions court judge ("the trial judge") who on 4 April 2003 awarded a sum of RM30,000 to the respondent-plaintiff ("plaintiff) for "fracture C1 vertebra".

The appeal is against quantum only.

Submission For Defendants

En Vincent Choo Kok Wai, learned counsel for the appellants, relied on *Lau Ee Ee v. Tang King Kwong* [1986] 1 MLJ 308 and submitted that the quantum should have been between RM12,000 and RM16,000 as the specialist's medical report revealed no residual neurological deficits, and that the impugned award of RM30,000 is 200% higher than the normal award given for the injury in question. Being an excessive award, on the basis of *Greenfield v. London and North Eastern Railway Co* [1945] KB 89, he added that an appellate court could review the quantum.

Contention For Plaintiff

Muhammad Hisham Segaran, learned counsel for the respondent, contended that an appellate court should be disinclined to interfere with an assessment of damages, citing *Zamri Md Som & Anor v. Nurul Fitriyaton Idawiyah Nahrawi* [2002] 1 CLJ 309; *Hang Jong Juan v. Tan Yeo Soon* [1986] 2 MLJ 5; *Pang Ah Chee v. Chong Kwee Sang* [1985] 1 MLJ 153; *Lim Joo Chiang v. Lim Siew Choo & Anor* [1955] MLJ 201; *Amar Singh v. Chin Kiew* [1960] MLJ 77; *Peh Diana & Anor v. Tan Miang Lee* [1991] 3 MLJ 375; *Greenfield, supra; Tan Kuan Yau v. Suhindrimani* [1985] 2 MLJ 22; *Mohd Salleh Shariff & Anor v. Bahari Yaakob* [2002] 1 LNS 118; *Sivalingam v. Periasamy* [1996] 4 CLJ 545; *Woon Ngee Yew & Ors v. Ng Yoon Thai & Ors* [1941] MLJ 37; *Wilson v. Pilley* [1957] 3 All ER 525; *Topaiwah v. Salleh* [1968] 1 MLJ 284; and *Tan Cheong Poh & Anor v. Teow Ah Keow* [1996] 3 CLJ 665.

Decision On Appeal

Role of Appellate Court in Respect of Quantum

In *Zamri Md Som, supra,* which was an appeal against the sessions court judge's award on quantum of damages, I had the occasion to consider the role of an appellate court hearing an appeal against the decision of a lower court in respect of assessment of damages, by referring to and following the decision of the Federal Court in *Topaiwah, supra,* as follows:

> The Federal Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted on some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled.

I also sought guidance from the decision of the Federal Court in *Rasidin bin Partorjo v. Frederick Kiat* [1976] 2 MLJ 214 which reiterated that "on appeal against the damages awarded, the appellant had to convince the appellate court that the learned trial judge had acted on a wrong principle of law or had misapprehended the facts or had for other reasons made a wholly erroneous estimate of the damages suffered" (see also *Peh Diana & Anor*, *supra*; *Greenfield*, *supra*; *Tan Kuan Yau*, *supra*).

The onus on the appellant is a heavy one: *Hang Jong Juan*, *supra*, S'pore Court of Appeal; *Lira Joo Chiang*, *supra* PC.

The finding that a trial judge has erred in the direction of being too generous would not be itself constitute a matter to be appealed from: *Pang Ah Chee*, *supra*.

The fixation of damages is so largely a matter of opinion or of impression that differences of calculation or assessment are to be expected, as it is, to some extent, an exercise of discretion: *Amar Singh*, *supra*, FM CA.

The aforesaid principles have also been reiterated in the cases cited for the respondent.

Question For Determination

The question for determination in this appeal before me is whether the trial judge in awarding RM30,000 for "fracture C1 vertebra" has acted on some wrong principle of law, or the amount awarded was so extremely high as to make it an entirely erroneous estimate or has misapprehended the facts.

The trial judge in awarding RM30,000 for "fracture C1 vertebra' has taken into consideration the fact that the respondent has been warded in the Seremban Hospital for one month for "initial skeletal (skull traction) and was forced to wear a collar as a result of "fracture Cl vertebra". In addition, the respondent as a computer operator would suffer pain at the neck when at work for more than three hours, numbness of the neck on and off under cold weather conditions and greater risk of developing cervical spondylosis in the long term.

The trial judge has also referred to the judgment of Chong Yik Liong J (as he then was) in *Lau Ee Ee, supra*, where his Lordship awarded RM18,000 for "fractures of transverse processes and compression fractures of 3rd and 4th lumbar vertebrae" in 1981, some 23 years ago.

Having had the advantage of reading the appeal record and after anxiously considering the submissions of the respective learned counsel and the grounds of decision of the trial judge, I am unable to agree with the contention of the appellants that the award of RM30,000 for "fracture C1 vertebra" in the year 2003 is wrong in law or in fact, as expounded in the authoritative judgments of our courts and reiterated above.

The considerations of inflation and enhanced cost of living over a period of more than two decades since the decision in *Lau Ee Ee, supra*, should be given proper weight in the assessment of quantum of damages in personal injury litigation. Indeed, it is instructive to note that our courts have also moved ahead with the times in these areas. Chan Shick Chin, a very senior member of the Bar, in his concise and well-researched book on *"Personal Injury, Law, Practice and Precedents"* published by MLJ in 2001 at p. 47 wrote:

> **vii Fall in value of money**
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> The fall in the value of money must be taken into account in the use of comparables so that an award which is eventually given would be reflective of the current value of money: 162: *Abdul Ghani Hamid v. Abdul Nasir Abdul Jabbar & Anor* [1995] 4 CLJ 317.

The judgment of Abdul Malik Ishak J in *Abdul Ghani, supra*, is in line with the trend in Singapore where Choor Singh J in delivering the judgment of the Court of Appeal also considered changes in the value of money, the decrease in the purchasing power of the dollar there or the increase in the cost of living over the years, as relevant factors in the assessment of damages. A similar approach was adopted by Yusoff J in *Wong Tin Vui v. Patrick Midok & Anor* [1975] 2 MLJ 260.

I am of the view that these time-honoured principles have become entrenched and settled principles which should continue to apply as they are in keeping with economic reality.

Conclusion

The appeal by the appellants is without merits as the said award by the trial judge is not contrary to any principle of law, not excessive nor erroneous. I therefore affirm the award and dimiss this appeal with costs.